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publishing directories are higher as a direct consequence of US West's refusal to bill Teleconnect's advertisers.

Second, Teleconnect believes that US West is cross-subsidizing Direct by failing to charge Direct the full fair market value of billing and collection services. US West's refusal to bill for Teleconnect suggests that such cross-subsidization is taking place. Absent Direct, the US West exchange companies would have every incentive to bill for all directory publishers, just as they do for other information service vendors. US West's refusal to bill for anyone other than Direct suggests that Direct itself is receiving special below-market rates that US West is unwilling to make available to others. That is, ratepayers are receiving less from Direct than they should -- and nothing from Direct's competitors. Such cross-subsidization is precisely the kind of anticompetitive conduct the MFJ is intended to prohibit. 9/

In short, US West's refusal to provide billing and collection services to Teleconnect on the same terms and conditions as it does to its subsidiary Direct (whatever those terms may be) violates the decree court's prohibition on discriminatory billing practices. Accordingly, the Justice Department should order US West to provide billing and collection to Teleconnect on terms no less favorable than those it offers to its subsidiary Direct. If US West is not ordered to provide billing and collection to Teleconnect, it must at least be ordered to bill for its own directory publishing services separately, rather than on the advertiser's local

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9/ The adverse effects of such anticompetitive conduct on US West's monopoly ratepayers have been recognized by state utility commissions in the US West region. The Western Conference of Public Service Commissioners has filed a complaint with Judge Greene concerning improper subsidization of US West Direct. See Advice to the Court by Western Conference of Public Service Commissioners Amici Curiae Regarding the Enforcement of the Order on Modification of Final Judgment Dated August 11, 1982 (filed Oct. 23, 1989). In addition, the Oregon Public Utility Commission recently ordered US West to cut its rates in the state by \$24 million to make up for profits the Commission found US West had improperly diverted from ratepayers to US West Direct. See Telephony, Jan. 8, 1990, at 8.

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telephone service bill. In addition, the Department should consider recommending sanctions against US West in light of the blatant nature of US West's decree violation here.

B. US West's Discrimination in the Pricing of  
Subscriber Listings Violates the Decree

US West has also engaged in discriminatory pricing of subscriber listings in violation of the decree and previous representations it has made to the Justice Department. The decree court has stated that "[d]iscrimination among information services or their providers is of course prohibited by the decree." <sup>10/</sup> In addition, in its request for authority to enter the print media business, US West told the Justice Department that subscriber information provided by its regulated telephone companies to its publishing subsidiaries would be made available "on the same terms and conditions to all who wish to obtain it." <sup>11/</sup> US West's decision to sell subscriber listings at different prices to different information service providers clearly violates the nondiscrimination mandate of the decree and the commitment US West made to the Department.

In order to publish its directories, Teleconnect must have a complete list of local telephone subscribers. Subscriber listings are an essential facility for Teleconnect, and the only practical source of those listings is the local exchange carrier. <sup>12/</sup> The US West subsidiary that provides

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<sup>10/</sup> Bell Atlantic Audiotex Order, slip op. at 8.

<sup>11/</sup> See Memorandum of US West, Inc. and Landmark Publishing Company as Amicus Curiae (filed March 2, 1987) at 9, BellSouth Advertising & Publishing Corporation v. Donnelley Information Publishing, Inc., Case No. 85-3233-Civ-Scott (S.D. Fla. filed May 13, 1986) (citing January 20, 1986 letter to Department of Justice). A copy of the US West Memorandum is attached as Exhibit B.

<sup>12/</sup> US West has acknowledged both these facts. In an Arizona case, US West Direct successfully sought a court decision requiring an independent telephone company to provide it with complete, accurate and up-to-date subscriber listings on the grounds that such listings are an essential facility for

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local telephone service charges Teleconnect 40 cents per listing for the right to publish the name, address (including zip code) and telephone number of each residential and business subscriber in Teleconnect's directories. US West charges Teleconnect \$4.00 for each governmental listing. <sup>13/</sup>

US West also sells subscriber listings to other information service providers. An examination of US West's pricing policies for listings demonstrates that US West clearly is engaged in unlawful discrimination. For example, US West has offered to sell Teleconnect's sister corporation, Teleconnect Data Base Marketing Company, subscriber listings for its telemarketing operations. According to US West's price list, consumer listings are available for a price of 6.5 cents each, and business listings for 7.5 cents. <sup>14/</sup> Thus, the price

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<sup>12/</sup> [Footnote continued]

directory publishers. See US West Direct Co. v. Citizens Utilities Co., No. CV 88-15997 (Ariz. Super. Ct, Maricopa County, August 17, 1989), attached as Exhibit C. And in its Memorandum in the BellSouth proceeding, US West stated that "[i]t would be virtually impossible" for a competitor to publish a directory without listings provided by the BOCs. US West Memorandum, Exhibit B, at 6. US West went on to point out that "[a]t this time only the BOCs, as part of their service order process, have the access to the complete and current subscriber information necessary to compile such listings." Id.

<sup>13/</sup> Teleconnect is unaware of the price US West's subsidiary Direct pays US West's local telephone subsidiaries for the right to use subscriber listings in its directories. However, as discussed below, that question is relevant as well.

<sup>14/</sup> US West's price list is attached as Exhibit D. The "US West Masterfile -- Consumer" price list indicates that the base price for listings of the names and addresses of residential telephone subscribers is \$40 per thousand, associated zip codes cost \$5 per thousand, and associated telephone numbers cost an additional \$20 per thousand -- for a total price of \$65 per thousand, or 6.5 cents each. The "US West Masterfile -- Business" price list indicates that the base price for listings of the names and addresses of business

[Footnote continued]

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US West charges Teleconnect for listings to be published is 515% more for consumer listings and 433% more for business listings than the price at which those listings are available for marketing purposes.

This discrimination suggests that US West's prices for listings turn on how the purchaser will use them. If the purchaser intends to use the listings to compete with US West Direct in the directory market, the prices are high. If the purchaser does not use the listings to compete, the price is much lower.

The high price US West charges Teleconnect certainly has no independent justification. US West itself has pointed out that the cost to the BOC of producing subscriber listings is low. <sup>15/</sup> In fact, in the Arizona case in which US West Direct was seeking access to listings generated by another local exchange carrier, US West successfully argued that the price for such listings should be limited to a pro rata share of the cost of the listings, plus the incremental cost of reproducing the listings, plus a reasonable rate of return. <sup>16/</sup> US West should not be permitted to play both sides of this issue, charging a price for its listings that is clearly not cost-based, while arguing that it is entitled to obtain listings from others at much lower rates.

US West's price discrimination also clearly conflicts with its previous representation to the Department that its policy was to provide listing information to all on the same

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<sup>14/</sup> [Footnote continued]

telephone subscribers is \$50 per thousand, with the same \$5 per thousand charge for associated zip codes and \$20 per thousand charge for associated telephone numbers -- for a total price of \$75 per thousand, or 7.5 cents each.

<sup>15/</sup> See US West Memorandum, Exhibit B, at 5 ("up-to-date basic listing information is easily and relatively inexpensively gathered by BOC personnel as part of their telephone service order process").

<sup>16/</sup> See US West Direct Co. v. Citizens Utilities Co., Exhibit C, at 2-3.

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terms and conditions. According to US West, this policy was adopted because of the company's "strongly-held belief that any attempt to use the telephone-service monopoly -- of which the listing function is currently a part -- to obtain a monopoly in the competitive directory publishing market is inappropriate." <sup>17/</sup> US West, however, is currently engaging in just such an attempt to leverage its control over listing information to maintain an effective monopoly in the directory market, in blatant disregard of its previous representations to the Department.

Teleconnect submits that the decree prohibits all BOC discrimination among information service providers -- the cost of listings should be the same to all. But the decree particularly condemns BOC manipulation of essential facilities such as directory listings to block competition to themselves. The Justice Department should accordingly order US West to cease discriminating among information service providers in the pricing of subscriber listings, and to charge Teleconnect no more for listings than it charges other information service providers. The price charged for listings should be based on the costs of generating them, plus a reasonable rate of return.

This problem may go beyond US West's use of listing prices as a barrier to competition in the directory market. The discussion above has assumed that at least US West's directory subsidiary, Direct, is paying the same high listing charges over to the US West exchange companies that provide them. This situation would not excuse US West's unequal pricing policies. But the violation would be even more serious if in fact Direct is obtaining listings at a much lower cost (or free) from its affiliated exchange companies. US West's open discrimination in the use of its listings and billing services to block directory competition strongly suggests that hidden discrimination and cross-subsidization also may be occurring. The Department should investigate this possibility in the context of an overall inquiry into US West's actions to maintain a virtual monopoly over the directory market. Teleconnect will provide any further information the Department needs to perform its investigation upon request.

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<sup>17/</sup> US West Memorandum, Exhibit B, at 9.

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The Department must not permit US West to further expand its directory activities until it has investigated and resolved the issues raised by this request for enforcement. As a result, the Department cannot appropriately consider US West's November 6, 1989, Request to Provide Region-Wide Electronic Directory Assistance Service until it has addressed the issues raised herein. Teleconnect is separately filing this request for enforcement as comments in the pending US West waiver proceeding. We ask that the Department resolve this matter prior to taking any action on the proposed waiver.

Conclusion

By adopting discriminatory billing and pricing policies, US West has attempted to use its monopoly position as a local telephone service provider as leverage to maintain an effective monopoly in the directory publishing market. Its actions clearly contravene the decree court's orders prohibiting discrimination among information service providers, particularly when that discrimination favors a BOC's own operations. In addition, US West's practices conflict with prior representations it has made to the Department.

The Justice Department should investigate these violations and order US West to offer billing and collection services to Teleconnect on terms no less favorable than those it offers to Direct, or at least order US West to bill Direct's advertisers separately. In addition, US West should be ordered to price subscriber listings on a nondiscriminatory basis, charging Teleconnect no more than it charges other information service providers. The price charged should reflect the costs

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of providing the listings, plus a reasonable rate of return.  
Finally, the Department should recommend sanctions against  
US West for its clear violations of the decree court's  
nondiscrimination provisions.

Respectfully submitted,

HOGAN & HARTSON

By: *K. A. Hastings*  
Peter A. Rohrbach  
Karis A. Hastings

Counsel for Teleconnect\*USA  
Directory Company

Attachments

cc: US West

# U S WEST WESTERN--CONSUMER

7,184,000 Residential Telephone Service  
Subscribers

BASE PRICE  
MINIMUM ORDER

PERIOD 1971  
\$20.00/M  
\$200.00/Lt

**PREREQ:** Consumers who have listed residential telephone service.

**REQUIREMENT:** Updated data.

**REMARK:** One time use only, unless specifically approved by U S WEST Marketing Resources Company.

Sample mailing piece or letterhead script required for approval.

**COMMISSION:** All recognized full brokers and advertising agencies. Commissions paid on base plan selections.

BASE PRICES		ADDITIONAL PRICES	
Telephone number	\$20.00/M	Quality Listing	M/C
Single Family Dwelling	\$10.00/M	Overseas Labels (4-up)	M/C
Multiple Family Dwelling	\$10.00/M	Pressure Sensitive Labels	\$ 8.00/M
ZIP Code	\$ 5.00/M	Magnetic Tape (non-reformat)	\$20.00
Area Code	\$ 5.00/M	Name Overlay	\$10.00/M
Telephone Prefix	\$ 5.00/M	Title Addition	\$10.00/M
State, SEC, County	\$ 3.50/M	Key Code	\$ 1.50/M
		Carrier Route	\$ 1.50/M

**Shipping Expenses:**  
Domestic orders: 3 working days of receipt of order.  
Overseas orders: 4 working days of receipt of order plus \$10.00 handling charge.  
International orders: 4 working days of receipt of order plus \$10.00 handling charge.  
All orders are shipped by air.

**U S WEST Marketing Resources Company:** 65% + \$5.00/M handling charge, \$4,000 minimum.  
**BASE PRICES:** 90% of base

**CONTACT:** U S WEST Marketing Resources Company  
10015 East Harvard Avenue, Suite 200  
Denver, CO 80231  
or call (303) 671-6600/1-800-440-4400

**REMARKS:**  
NOT FOR  
REFERENCE



# U S WEST MAILING - BUSINESS

891,000 Business Telephone Service Subscribers **BASE PRICE** \$50.00/M  
**MINIMUM ORDER** \$200.00/M

**TERMS:** Businessmen who have listed business telephone service.  
**REMARKS:** Updated daily.

**REMARKS:** One time use only, unless specifically approved by U S WEST Mailing Resources Company.  
 Sample mailing piece or telemarketing script required for approval.  
**COMMENTS:** All recognized list brokers and advertising agencies. Commissions paid on these plus selections.

PRODUCT TYPE		AMOUNT	
Telephone number	\$20.00/M	Gallery Listing	N/C
SNIC	\$10.00/M	Creative Labels (4-up)	N/C
ZIP Code	\$ 5.00/M	Pressure Sensitive Labels	\$ 6.00/M
Area Code	\$ 5.00/M	Magnetic Tape (non-returnable)	\$20.00
Telephone Prefix	\$ 5.00/M	Name Overlay	\$10.00/M
State, SCF, County	\$ 3.50/M	Title Addition	\$10.00/M
		Key Code	\$ 1.50/M
		Carrier Route	\$ 1.50/M

**ESTIMATED DELIVERABLES**  
 Shipment within 2-5 working days of receipt of order.  
 Shipping and handling charges: Cost of shipping plus \$5.00 handling charge.  
 Insurance: Insuring the shipment is the responsibility of the customer. The carrier is not responsible for damage to the shipment.

**ALL ORDER AMOUNTS:** 85% + \$6.00/M mailing charges. \$0.00 minimum.  
**MINIMUM ORDER:** \$200.00/M

**CONTACT:** U S WEST Mailing Resources Company  
 10375 East Harvard Avenue, Suite 201  
 Denver, CO 80231  
 or call (303) 671-6000/1-800-888-4000

**U S WEST MAILING RESOURCES**

**EXHIBIT 16**

## **AT&T 800 SERVICE LISTING FILE LICENSE AGREEMENT**

**1991**

THIS AGREEMENT, entered into this 31st day of May 1991, between American Telephone and Telegraph Company, hereinafter referred to as "AT&T" and Multi-Local Media Corp., hereinafter referred to as "Publisher."

WHEREAS, Publisher plans to compile, produce, publish and/or sell a Directory, in printed or electronic access form, containing exclusively telephone numbers of subscribers to AT&T 800 Service;" and

WHEREAS, Publisher desires to obtain copies of AT&T's listings of the 800 number subscribers who have authorized their release, referred to hereinafter as the "AT&T 800 Service Listing File;" and

WHEREAS, AT&T is willing to furnish its AT&T 800 Service Listing File for the limited purpose, and subject to the terms and conditions, set forth herein;

NOW, THEREFORE, the parties agree as follow:

1. AT&T agrees to provide to the Publisher, once during the period May 1, 1991, to April 30, 1992, a magnetic tape/disc copy of its AT&T 800 Service Listing File containing, for each subscriber who has authorized its release, the following information, which may be changed from time to time at AT&T's sole discretion:

- Business name
- City and state location
- AT&T 800 Service number
- Geographic limitations for calling the 800 number
- Type of business, identified by the appropriate United States Department of Commerce Standard Industrial Classification
- Classified heading for business
- Business' primary use of their AT&T 800 Service
- Who calls the 800 number (consumers, businesses, or both)

The Service Listing file will be updated in accordance with AT&T's standard updating procedures and will be the most current file available at the time it is provided to the Publisher.

2. AT&T grants to Publisher a non-exclusive license to use the AT&T 800 Service Listing File provided during 1991 for the sole purpose of compiling, producing, publishing, selling, and/or leasing electronic access to a Directory, in printed or electronic access form, of the numbers of AT&T 800 Service subscribers. Publisher agrees to make no other use of the AT&T 800 Service Listing File.

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This license agreement may be renewed from year to year upon the mutual consent of the parties. Unless renewed, all rights of the Publisher under this license agreement will terminate one year from the date of execution.

3. Nothing in this Agreement or elsewhere shall give the Publisher any exclusive right to the use of AT&T's 800 Service Listing File, and AT&T shall be free at any time to enter into similar agreements and to provide information to others under the same or different terms and conditions as AT&T may, in its sole discretion, determine.

4. Nothing in this Agreement or elsewhere shall limit or prescribe in any way, the format, content and scope of the directories now being published by or for AT&T or to be published in the future; and AT&T expressly reserves the right to publish, or to contract for the publication of, or to sponsor the publication of, directories in such format, content and scope as it may, in its sole discretion, determine. Publisher acknowledges that right, and further acknowledges that AT&T, beginning in 1984, contracted for and sponsored the publication of an AT&T 800 Directory, which directory may continue to be published in succeeding years. Publisher expressly waives and releases any and all claims arising out of this licensing of the AT&T 800 Service Listing File, and Publisher's licensed uses hereunder, by reason of AT&T's publication of, or contracting for the publication of, or sponsorship of the publication of, any AT&T 800 Directory.

5. The AT&T 800 Service Listing File provided by AT&T shall contain 800 numbers only of subscribers who have authorized their numbers to be released. Publisher agrees not to publish 800 numbers of subscribers who have not authorized the release of such numbers in any publication which contains information obtained pursuant to this Agreement.

6. The copies of the AT&T 800 Service Listing File furnished by AT&T shall remain the property of AT&T. The rights granted herein shall be non-assignable and the Publisher shall have no right to assign, subcontract, license or permit any other publisher or person to use such information without the express written consent of AT&T. The Publisher is authorized by this Agreement to make a general distribution of the printed directories which it publishes. When the Publisher no longer needs the AT&T 800 Service Listing File magnetic tapes for the compilation of its directory, the Publisher shall, at its own expense, by registered mail, return the tapes at a time designated by AT&T, but in no event later than the completion of the compilation of the pertinent directory.

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7. The publisher shall not reproduce in any way copies of the magnetic tapes furnished by AT&T, except as necessary for its own use. Publisher shall not permit anyone but its duly authorized employees and agents to inspect or use the listing information furnished by AT&T, and shall not allow such listing information out of its possession at any time prior to its return to AT&T. The publisher shall take appropriate security measures to guard against any unauthorized use of the listing information, whether by the Publisher, its agents and employees, or by others, and any unauthorized use shall be deemed a material breach of the Publisher's agreement and obligation, regardless of the security measures undertaken or to be initiated by the Publisher. At the option of AT&T and upon reasonable notice to the Publisher, AT&T shall have the right to inspect, at the Publisher's premises, the tape furnished and the manner in which it is used. Such inspection shall not release the Publisher from any duties and obligations under this Agreement.

8. The Publisher agrees to exercise care in the compilation of its directory to insure accuracy in the listings derived from information furnished by AT&T and to print the month and year of publication either on the front cover of its directory or in a prominent location therein. Publisher agrees not to publish information which it has been advised by AT&T or otherwise has reason to believe is incorrect, incomplete or out of date.

9. The Publisher recognizes that AT&T has a valid interest in minimizing the numbers of uncompleted calls to 800 numbers; accordingly, Publisher agrees that in its publication, it shall prominently indicate all geographic calling limits to which any 800 number is subject by indicating such limits in any publication in substantially the same manner as such limits are indicated in the AT&T 800 Service Listing File.

10. The Publisher shall copyright Publisher's Directory and shall not permit any other person to publish, copy, reprint or make any other use of the listings obtained from the records which are contained in Publisher's copyrighted Directory, unless such use is agreed to in advance in writing by AT&T. Publisher shall also cause a notice of copyright to be printed or permanently applied by ink stamp on the title page of Publisher's Directory.

11. The Publisher hereby releases AT&T from any liability for damages because of errors or omissions in the copy of the AT&T 800 Service Listing File furnished by AT&T or because of failure to promptly deliver such copy to the Publisher.

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12. The Publisher shall indemnify, protect, save harmless and defend AT&T from and against any and all loss, liability, damages and expense arising out to any demand, claim, suit or judgement for damages which may arise directly or indirectly out of AT&T's supplying of copies of the AT&T 800 Service Listing File under this Agreement or the Publisher's use of such copies, irrespective of any omission, fault, failure, negligence or alleged negligence on the part of AT&T.

13. ALL DATA AND OTHER MATERIAL SOLD OR PROVIDED BY AT&T TO PUBLISHER UNDER THIS AGREEMENT IS PROVIDED "AS IS." AT&T MAKES ABSOLUTELY NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING ANY DATA OR MATERIAL (OR ITS ACCURACY) SOLD OR PROVIDED HEREUNDER INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. The Publisher agrees to pay to AT&T one cent (\$.01) for each 800 number listing appearing in the AT&T 800 Service Listing File, and the actual cost of production of the copy of the magnetic tape, disk or camera ready pages, including labor and materials, the full amount which shall be that amount which is billed to AT&T, or incurred by it, for production of the tape, or materials, plus any applicable city, state or federal taxes, plus any delivery charges. Payment will be made by the Publisher within thirty (30) days after receipt of bill from AT&T.

15. No later than five (5) days prior to distribution, the Publisher shall furnish to AT&T at least one copy of the directory.

16. The Publisher will not in any way represent to any person nor make any advertising claim that its directories are sponsored or approved by AT&T or any AT&T entity. The Publisher shall not use any AT&T trademark, servicemark or symbol in its publication or in its directories in such form as to cause or create confusion with AT&T's directories, without written authorization, except for the authorized treatment attached as Exhibit "B".

17. AT&T requires as a condition to any listing in Publisher's directory(ies) of AT&T Company 800 numbers, that Publisher's listings of such numbers conform exactly to the format presented in Exhibit A to this Agreement. Publisher agrees that, to the extent it lists AT&T Company 800 numbers in its directory(ies), its listings will conform exactly to the format of Exhibit A. Publisher agrees not to alter any camera ready materials without written permission of AT&T.

18. If the Publisher shall violate any provision of this Agreement, AT&T may terminate the Agreement, forthwith and without notice, and all the Publisher's rights hereunder shall be terminated. Failure of AT&T to enforce or insist upon compliance with any provision of the Agreement shall not constitute a general waiver thereof.

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19. AT&T expects, on an annual basis or at such other times and under such conditions as it may in its sole discretion determine, to update the information in the AT&T 800 Service Listing File.

20. Performance by AT&T under this Agreement shall be excused where prevented by war, civil commotion or Act of God, in the event of destruction of AT&T's data base from any cause, inability to process the data base for the use of the Publisher by reason of work cessation involving a labor dispute or by reason of damage to AT&T's premises by fire or other casualty, or any other cause beyond the reasonable control of AT&T.

21. This Agreement shall be governed by, and interpreted according to, the laws of the State of New Jersey.

22. In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect under the law of this State or of the United States of America, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

23. Neither Publisher nor its subcontractors, or the employees or agents of any of them, shall be deemed to be AT&T Communications' employees or agents, it being understood that Publisher and its subcontractors are independent contractors for all purposes and at all times, and Publisher shall be wholly responsible for withholding or payment of all Federal, State and local income and other payroll taxes with respect to its employees, including contributions from them and as required by law.

24. This writing constitutes the entire Agreement between the parties and shall not be changed except by written agreement signed by both parties.

25. AT&T may agree to exempt the Publisher from any charges for this service or any per listing charge as stated in Article #14 of this agreement, for this initial use of the Directory File. Future use of the Directory File will involve the charges as stated in Article #14.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized agents on the date(s) written below. This agreement shall not be binding until it is signed by both parties.

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PUBLISHER: Multi-Local Media Corp.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed signer's name)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

AMERICAN TELEPHONE & TELEGRAPH CO.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed signer's name)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## **EXHIBIT 17**



**EXHIBIT 18**

1 Larry A. Hammond - 004049  
 2 Donald M. Peters - 005929  
 3 W. Scott Sales - 010147  
 MEYER, HENDRICKS, VICTOR,  
 OSBORN & MALEDON  
 2700 North Third St., Suite 4000  
 Phoenix, Arizona 85004  
 (602) 263-8700  
 Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

9 U S WEST DIRECT COMPANY,  
 a Colorado corporation,

10 Plaintiff,

11 vs.

12 CITIZENS UTILITIES COMPANY,  
 a Delaware corporation and  
 13 CITIZENS UTILITIES RURAL  
 COMPANY, INC., a Delaware  
 14 corporation,

15 Defendants.

No.-CV 88-15997

ORDER GRANTING DECLARATORY  
 AND  
 MANDATORY INJUNCTIVE RELIEF

(Assigned to the Hon. Ralph  
 Lester, Judge Pro Tem)

16  
 17 The Court, having heard testimony and evidence offered by  
 18 both parties in the above-captioned action, and after having  
 19 the benefit of extensive briefing during the trial on the  
 20 relevant issues of fact and law, and having considered the  
 21 arguments of counsel, enters the following order of declaratory  
 and mandatory injunctive relief:

22 (1) Accurate, complete and up-to-date telephone subscriber  
 23 listing information (consisting of telephone subscriber name,  
 24 address, and telephone number) is an essential facility for  
 25 publishers of combined white and yellow pages directories who  
 26

wish to compete in the Mohave County market on an area-wide basis against Citizens Utilities, the utility directory publisher in that area.

(2) U S WEST Direct is a directory publisher in competition with Citizens Utilities in Mohave County on an area-wide basis.

(3) This essential facility cannot reasonably or practically be duplicated from other sources.

(4) Unless this essential facility is made available by Citizens Utilities on reasonable terms and conditions, U S WEST Direct will be irreparably injured.

(5) U S WEST Direct has no adequate remedy at law.

(6) The Court, therefore, orders Citizens Utilities to make this essential facility available to U S WEST Direct under the following conditions:

(a) As Citizens Utilities has the ability to provide updated telephone subscriber data on a timely basis, it is required to provide that information within thirty (30) days of a request in writing from U S WEST Direct. Citizens Utilities will have the right to delete the names, addresses, and telephone numbers of those subscribers who have advised Citizens that they do not wish to be published in a directory (commonly referred to as a "do not publish" or "non-pub").

(b) The price to be paid by U S WEST Direct is to be based upon additional information furnished by both

1 Plaintiff and Defendants establishing U S WEST Direct's pro  
2 rata share of the overall cost of producing telephone  
3 subscriber information, plus the incremental cost of  
4 reproducing it for Plaintiff's benefit, plus a reasonable  
5 rate of return on all costs involved.

6 (c) The parties may enter into a written form of  
7 licensing agreement containing such reasonable terms and  
8 conditions as they may agree upon, but in the event that  
9 they are unable to agree upon specific terms, the terms of  
10 the final draft agreement accompanying Ms. Brigid Smith's  
11 letter of September 23, 1987 (Exhibit 75) shall govern the  
12 relationship between the parties.

13 (7) ~~The Court further declares that Citizens Utilities is~~  
14 ~~prohibited by the laws of the State of Arizona from demanding~~  
15 ~~or charging discriminatory prices for the sale of telephone~~  
16 ~~subscriber listing information or charging prices that would~~  
17 ~~constitute a subsidization of its regulated telephone service.~~

18 (8) The provisions of this Order are continuing and shall  
19 govern all future requests for telephone subscriber information  
20 by U S WEST Direct. The Court retains jurisdiction over this  
21 matter in order to provide such other or additional orders as  
22 may become necessary to assure that the provisions of this  
23 Order are promptly and reasonably followed by the parties.  
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Entered this 17 day of <sup>Aug</sup>~~July~~, 1989.

S. P. Lester  
The Honorable Ralph Lester,  
Judge Pro Tem

## **EXHIBIT 19**



**Turn  
objections  
into sales**

**YES**  
**NO**

